

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BARBARA J FOSTER**  
Claimant

**APPEAL NO. 08A-UI-08003-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY MEDICAL CENTER-CLINTON INC**  
Employer

**OC: 08/03/08 R: 04**  
**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated September 3, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on September 23, 2008. The claimant participated. The employer participated by Dave Frett, human resource generalist, and Allen Morrow, director environmental services.

**ISSUE:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 2004, until July 4, 2008, when she voluntarily quit her employment. Ms. Foster was employed as an Environmental Service Worker I on a full-time basis and was paid by the hour. Her immediate supervisor was Allen Morrow.

Ms Foster left her employment with Mercy Medical Center-Clinton on the evening of July 4, 2008, after becoming upset because day-shift environmental service workers had not completed first-level cleaning of a contaminated patient room. The claimant had become somewhat upset when the first-shift workers had informed her that the first-level cleaning was not complete. As an Environmental Service Worker I, the claimant was qualified to perform both initial and second-level cleaning in contaminated rooms, and protective gear was available. The claimant had routinely been required to perform first- and second-level cleaning in rooms, and the employer's expectation was that the claimant would perform whatever duties were necessary to ensure that the room was clean and ready for the next patient.

When Ms. Foster examined the room in question, she found that some first-level cleaning had been accomplished but other duties such as emptying receptacles had not. Because the

claimant could not reach her supervisor, who was off duty, she spoke with a health supervisor and indicated the problem but did not indicate to the health supervisor that she was leaving prior to the end of her shift or quitting her employment. Ms. Foster was angry because on two occasions in the past she felt that the day shift had not completed their duties and had left them for the claimant to complete. Ms. Foster had brought this to the attention of her supervisor and felt that because this was the third time it had occurred, there'd be no change in the future.

Employees who are dissatisfied with the response of their immediate supervisor are able to take their concerns up the hospital's chain of command to its CEO and also are free to call the hospital's "integrity hotline" that is available 24 hours a day to address employee concerns or complaints. A third alternative was available to the claimant in the form of leaving the room uncleaned and marking it to be cleaned later by the day shift. Ms. Foster was aware of these alternatives but did not utilize them.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes Ms. Foster quit her employment with good cause for reasons attributable to the employer. It does not.

The evidence in the record establishes that reasonable alternatives were available to Ms. Foster and that she was aware of them. In her position of Environmental Service Worker I, the claimant was not only qualified but also expected to perform first- and second-level cleanings of contaminated rooms and had often done so in the past. Protective gear and assistance were available. The evidence in the record establishes that Ms. Foster was angry at the time because she felt that the previous shift had left work for her that they should have accomplished and left her employment for that reason.

While Ms. Foster's reasons for leaving were undoubtedly good from her personal viewpoint, the administrative law judge must conclude, based upon the evidence in the record, that good cause attributable to the employer for leaving has not been shown.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

For these reasons, the administrative law judge concludes that the claimant left employment for reasons that are disqualifying. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.
  - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated September 3, 2008, reference 01, is reversed. The claimant quit work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she is otherwise eligible. Because any benefits the claimant has received would constitute an overpayment, the administrative law judge remands the matter to the Claims Divisions for determination of whether there has been an overpayment, the amount, and whether the claimant will have to repay the benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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